

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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HAILES BOARDING HOME,

Petitioner,

DOAH CASE NO. 17-2710

AHCA NO. 2016003585

v.

FILE NO. 11910045

LICENSE NO. 5776

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

FACILITY TYPE: ASSISTED
LIVING FACILITY

Respondent,

RENDITION NO.: AHCA-17-0643 -FOF-OLC

FINAL ORDER

This cause was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), Lynne A. Quimby-Pennock, conducted a formal administrative hearing. The issue in this case is whether the Agency for Health Care Administration (“AHCA” or “Agency”) should grant or deny Petitioner’s assisted living facility licensure renewal application. The Recommended Order dated September 7, 2017, is attached to this Final Order and incorporated herein by reference.

RULING ON EXCEPTIONS

Petitioner filed exceptions to the Recommended Order.

In determining how to rule upon Petitioner’s exceptions and whether to adopt the ALJ’s Recommended Order in whole or in part, the Agency must follow section 120.57(1)(l), Florida Statutes, which provides:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion

of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

§ 120.57(1)(l), Fla. Stat. Additionally, “[t]he final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.”

§ 120.57(1)(k), Fla. Stat. In accordance with these legal standards, the Agency makes the following rulings on Petitioner’s exceptions:

In its exceptions, Petitioner takes exception to the Agency’s action in general, arguing that the Agency cannot deny Petitioner’s licensure renewal application because it failed to issue an omissions letter. Petitioner’s exceptions are not in compliance with section 120.57(1)(k), Florida Statutes, because they “[do] not clearly identify the portion of the recommended order by page number or paragraph.” Petitioner references some paragraphs in the Recommended Order, but does not explicitly take exception to them. Thus, the Agency is not required to address Petitioner’s exceptions and will not do so in this Final Order.

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Recommended Order.

CONCLUSIONS OF LAW


The Agency adopts the conclusions of law set forth in the Recommended Order.

IT IS THEREFORE ADJUDGED THAT:

1. Petitioner's licensure renewal application is hereby denied.
2. In order to ensure the health, safety, and welfare of the Petitioner's clients, the license expiration date is extended for 30 days for the sole purpose of allowing the safe and orderly discharge of clients. § 408.815(6), Fla. Stat. As a condition of this extension, the Petitioner is prohibited from accepting any new admissions during this period and must immediately notify the clients that they will soon be discharged. The Petitioner is subject to monitoring by the Agency and possibly third parties. The Agency may terminate the 30-day extension or modify the conditions at any time. The Petitioner must comply with all other applicable federal and state laws. At the conclusion of 30 days, or upon the discontinuance of operations, whichever is first in time, the Petitioner shall promptly return the license certificate which is the subject of this agency action to the appropriate licensure unit in Tallahassee, Florida. Fla. Admin. Code R. 59A-35.040(5).
3. In accordance with Florida law, Petitioner is responsible for retaining and appropriately distributing all client records within the timeframes prescribed in the authorizing statutes and applicable administrative code provisions. Petitioner is advised of Section 408.810, Florida Statutes.
4. In accordance with Florida law, Petitioner is responsible for any refunds that may have to be made to the clients.
5. Petitioner is given notice of Florida law regarding unlicensed activity. It is advised of Section 408.804 and Section 408.812, Florida Statutes. Petitioner should also consult

the applicable authorizing statutes and administrative code provisions. Petitioner is notified that the revocation of its registration may have ramifications potentially affecting accrediting, third party billing including but not limited to the Florida Medicaid program, and private contracts.

DONE AND ORDERED in Tallahassee, Florida, on this 2nd day of November, 2017.



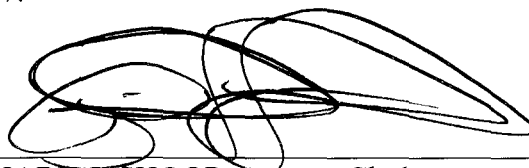
JUSTIN M. SENIOR, Secretary
AGENCY FOR HEALTH CARE ADMINISTRATION

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 30 day of November, 2017.



RICHARD J. SHOOP, Agency Clerk
AGENCY FOR HEALTH CARE ADMINISTRATION
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308
Telephone: (850) 412-3630

Copies furnished to:

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| Jan Mills Facilities Intake Unit Agency for Health Care Administration (Electronic Mail) | Keisha Woods, Unit Manager Assisted Living Unit Agency for Health Care Administration (Electronic Mail) |
| Finance & Accounting Revenue Management Unit Agency for Health Care Administration (Electronic Mail) | Pat Caufman, Field Office Manager Area 5/6 Field Office (Electronic Mail) |
| Katrina Derico-Harris Medicaid Accounts Receivable Agency for Health Care Administration (Electronic Mail) | Thomas W. Caufman, Esquire Quintairos, Prieto, Wood & Boyer, P.A. 1410 North Westshore Boulevard Suite 200 Tampa, Florida 33607 (via email to tcaufman@qpwblaw.com) |
| Shawn McCauley Medicaid Contract Management Agency for Health Care Administration (Electronic Mail) | Andrea Elise Jones, Administrator Hailes Boarding Home 1009 North Willow Avenue Tampa, Florida 33607 (U.S. Mail) |

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| Honorably Lynne A. Quimby-Pennock Administrative Law Judge Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, Florida 32399-3060 (Electronic Filing) | Lindsay W. Granger, Esquire Lourdes A. Naranjo, Esquire Assistant General Counsels (Electronic Mail) |
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NOTICE OF FLORIDA LAW

408.804 License required; display.--

(1) It is unlawful to provide services that require licensure, or operate or maintain a provider that offers or provides services that require licensure, without first obtaining from the agency a license authorizing the provision of such services or the operation or maintenance of such provider.

(2) A license must be displayed in a conspicuous place readily visible to clients who enter at the address that appears on the license and is valid only in the hands of the licensee to whom it is issued and may not be sold, assigned, or otherwise transferred, voluntarily or involuntarily. The license is valid only for the licensee, provider, and location for which the license is issued.

408.812 Unlicensed activity. --

(1) A person or entity may not offer or advertise services that require licensure as defined by this part, authorizing statutes, or applicable rules to the public without obtaining a valid license from the agency. A licenseholder may not advertise or hold out to the public that he or she holds a license for other than that for which he or she actually holds the license.

(2) The operation or maintenance of an unlicensed provider or the performance of any services

that require licensure without proper licensure is a violation of this part and authorizing statutes. Unlicensed activity constitutes harm that materially affects the health, safety, and welfare of clients. The agency or any state attorney may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of the unlicensed provider or the performance of any services in violation of this part and authorizing statutes, until compliance with this part, authorizing statutes, and agency rules has been demonstrated to the satisfaction of the agency.

(3) It is unlawful for any person or entity to own, operate, or maintain an unlicensed provider. If after receiving notification from the agency, such person or entity fails to cease operation and apply for a license under this part and authorizing statutes, the person or entity shall be subject to penalties as prescribed by authorizing statutes and applicable rules. Each day of continued operation is a separate offense.

(4) Any person or entity that fails to cease operation after agency notification may be fined \$1,000 for each day of noncompliance.

(5) When a controlling interest or licensee has an interest in more than one provider and fails to license a provider rendering services that require licensure, the agency may revoke all licenses and impose actions under s. 408.814 and a fine of \$1,000 per day, unless otherwise specified by authorizing statutes, against each licensee until such time as the appropriate license is obtained for the unlicensed operation.

(6) In addition to granting injunctive relief pursuant to subsection (2), if the agency determines that a person or entity is operating or maintaining a provider without obtaining a license and

determines that a condition exists that poses a threat to the health, safety, or welfare of a client of the provider, the person or entity is subject to the same actions and fines imposed against a licensee as specified in this part, authorizing statutes, and agency rules.

(7) Any person aware of the operation of an unlicensed provider must report that provider to the agency.